

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

WP(C).No. 24255 of 2007(K)

ST.243/2005 of J.M.F.C.-III, THRISSUR

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PETITIONER:

H.M.RAHEEL,
BABUVILASOM, KULAMUTTOM, KAVALAYOOR,
VARKALA, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.M.TRIPTEN

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
HOME SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
2. LARSON & TOUBRO LIMITED,
REPRESENTED BY M.P.SURESH KUMAR,
SASTHAMANGALAM, THIRUVANANTHAPURAM.
3. M/S. ULTRATECH CEMENT LIMITED,
REPRESENTED BY MR. M.V.SIVAKUMAR,
ACCOUNTS OFFICER, RAVIPURAM ROAD, OXFORD,
ERNAKULAM.

BY Government Pleader ADV.SRI.M.S.BREEZ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

R.BASANT, J
= = = = =
W.P.(C). No. 24255 Of 2007
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Dated this the 22nd day of August, 2007

JUDGMENT

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instrument Act act. The petitioner prays that invoking the powers under Sec.482 Cr.P.C. proceedings against the petitioner may be quashed.

2. What are the grounds? First of all it is contended that the cheque was not issued for the discharge of any debt or liability but the petitioner was compelled to hand over blank signed cheques to the complainant as security for discharge of his liability accrued in certain transactions. This question of fact cannot certainly to be attempted to be resolved in this proceedings under Section 482 Cr.P.C. Parties must be left to raise and substantiate appropriate and relevant contentions before the trial court. That contention cannot persuade me to invoke the powers under Sec.482 Cr.P.C.

3. The learned counsel for the petitioner then contends relying on Ext.P2, that the presentation of the cheque is barred

by limitation. He relies on Ext.P2 to contend that it was a blank signed cheque which was handed over. Ext.P2 letter dated 2.5.02 allegedly refers to the cheque in question in this case, according to the counsel . The counsel contends that inasmuch as the letter bears date 02.5.02, the presentation of the cheque beyond 6 months from that date must be held to be barred under the provisions of Sec.138. It is now trite that crucial date to work out the said period of six months is not the date on which the cheque is handed over but the date which the cheque bears. In these circumstances, it can not at all be held with the help of Ext.P2 that the cheque is barred and has not been presented within six months from the date of cheque as insisted by the provisio of Sec.138.

4. The learned counsel for the petitioner contends that a civil suit is filed by the complainant. A counter claim has been raised in that civil proceedings by the petitioner herein. The petitioner has claimed that a huge amount was due from the complainant. Pendency of such a civil suit cannot also at all affect the validity of the prosecution under Sec.138 of the Negotiable Instrument Act. No other contentions are raised.

5. It follows from the above discussions that no valid ground has been raised to persuade me to invoke the powers under Section.482 Cr.P.C and to quash the further proceedings . Accordingly this writ petition is dismissed.

6. I may hasten to observe that the dismissal of this writ petition will not in any way fetter the rights of the petitioner to raise all necessary and appropriate contentions before the learned Magistrate in the course of the trial. I repeat it that I have chosen only to hold that there is no features suggesting the need for invocation of the powers under Sec.482 Cr.P.C.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE